

2011 DRAFTING REQUEST

Bill

Received: **10/24/2011**

Received By: **mkunkel**

Wanted: **As time permits**

Companion to LRB:

For: **Keith Ripp (608) 266-3404**

By/Representing: **Tyler Wenzlaff**

May Contact: **Sandy Chalmers, DATCP**

Drafter: **mkunkel**

Subject: **Trade Regulation - other**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Ripp@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Require enforcement of federal "do not call" telemarketing list

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/P1	mkunkel 11/03/2011	scalvin 11/22/2011	jfrantze 11/28/2011	_____	mbarman 11/28/2011		State
/1	mkunkel 12/14/2011	csicilia 12/15/2011	jfrantze 12/15/2011	_____	lparisi 12/15/2011		State
/2	mkunkel 01/25/2012	scalvin 01/27/2012	rschluet 01/27/2012	_____	ggodwin 01/27/2012		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	mkunkel 02/06/2012	csicilia 02/07/2012	jfrantze 02/07/2012	_____	sbasford 02/07/2012	sbasford 02/10/2012	

FE Sent For: 01/30/2012.

($\frac{1}{2}$) <END>

→ 02-13-2012
($\frac{1}{3}$) ← See
attached

2011 DRAFTING REQUEST

Bill

Received: 10/24/2011

Received By: mkunkel

Wanted: As time permits

Companion to LRB:

For: Keith Ripp (608) 266-3404

By/Representing: Tyler Wenzlaff

May Contact: Sandy Chalmers, DATCP

Drafter: mkunkel

Subject: Trade Regulation - other

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Ripp@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Require enforcement of federal "do not call" telemarketing list

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/P1	mkunkel 11/03/2011	scalvin 11/22/2011	jfrantze 11/28/2011	_____	mbarman 11/28/2011		State
/1	mkunkel 12/14/2011	csicilia 12/15/2011	jfrantze 12/15/2011	_____	lparisi 12/15/2011		State
/2	mkunkel 01/25/2012	scalvin 01/27/2012	rschluet 01/27/2012	_____	ggodwin 01/27/2012		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	mkunkel 02/06/2012	csicilia 02/07/2012	jfrantze 02/07/2012	_____	sbasford 02/07/2012		

FE Sent For: **01/30/2012.**

<END>

2011 DRAFTING REQUEST

Bill

Received: 10/24/2011

Received By: mkunkel

Wanted: As time permits

Companion to LRB:

For: Keith Ripp (608) 266-3404

By/Representing: Tyler Wenzlaff

May Contact: Sandy Chalmers, DATCP

Drafter: mkunkel

Subject: Trade Regulation - other

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Ripp@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Require enforcement of federal "do not call" telemarketing list

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							State
/P1	mkunkel 11/03/2011	scalvin 11/22/2011	jfrantze 11/28/2011		mbarman 11/28/2011		State
/1	mkunkel 12/14/2011	csicilia 12/15/2011	jfrantze 12/15/2011		lparisi 12/15/2011		State
/2	mkunkel 01/25/2012	scalvin 01/27/2012	rschluet 01/27/2012		ggodwin 01/27/2012		

1/3 g's 2/7
11

FE Sent For:

<END>

01-30-2012
("12")

see
attached

02-13-2012
("13")

2011 DRAFTING REQUEST

Bill

Received: 10/24/2011

Received By: mkunkel

Wanted: As time permits

Companion to LRB:

For: Keith Ripp (608) 266-3404

By/Representing: Tyler Wenzlaff

May Contact: Sandy Chalmers, DATCP

Drafter: mkunkel

Subject: Trade Regulation - other

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Ripp@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Require enforcement of federal "do not call" telemarketing list

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							State
/P1	mkunkel 11/03/2011	scalvin 11/22/2011	jfrantze 11/28/2011		mbarman 11/28/2011		State
/1	mkunkel 12/14/2011	csicilia 12/15/2011	jfrantze 12/15/2011		lparisi 12/15/2011		

FE Sent For:

12 01/26/11
SAC & CJS

<END>

2011 DRAFTING REQUEST

Bill

Received: 10/24/2011

Received By: mkunkel

Wanted: As time permits

Companion to LRB:

For: Keith Ripp (608) 266-3404

By/Representing: Tyler Wenzlaff

May Contact: Sandy Chalmers, DATCP

Drafter: mkunkel

Subject: Trade Regulation - other

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Ripp@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Require enforcement of federal "do not call" telemarketing list

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							State
/P1	mkunkel 11/03/2011	scalvin 11/22/2011	jfrantze 11/28/2011		mbarman 11/28/2011		

FE Sent For:

1 gs 11/15 12/15 <END>
11

2011 DRAFTING REQUEST

Bill

Received: 10/24/2011

Received By: mkunkel

Wanted: As time permits

Companion to LRB:

For: Keith Ripp (608) 266-3404

By/Representing: Tyler Wenzlaff

May Contact: Sandy Chalmers, DATCP

Drafter: mkunkel

Subject: Trade Regulation - other

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Ripp@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Require enforcement of federal "do not call" telemarketing list

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

1/?	mkunkel	Sac & js 11/22/11	 11/28	 11/28			
		/PI					

FE Sent For:

<END>

Kunkel, Mark

From: Kunkel, Mark

Sent: Friday, October 21, 2011 10:49 AM

To: Kunkel, Mark

Subject: FW: States using federal do not call registry

Tyler in Ripp's office directed me to Sandy Chalmers (224-4929) at DATCP for details on changes to the no call statute. I spoke with Sandy today. Based on that conversation, and my early conversation with Tyler, here are the drafting instructions:

1. Require the state to use the federal do not call list. The federal list allows a consumer to add his or her phone number once; there is no need to renew inclusion, as inclusion is permanent. Under the Wisconsin list, a consumer must renew inclusion (i.e. registration) every 2 years. So, get rid of Wisconsin list, but use federal list for state regulation.
2. Require telemarketers to refer to the federal list for numbers with Wisconsin area codes.
3. Except for changes necessary for the above, do not otherwise change state law (e.g., enforcement).

The above changes would allow DATCP to enforce no call restrictions under state law for consumers with Wisconsin area codes. As a result, there's no need for Wisconsin consumers to register with DATCP, and there's no need for DATCP to maintain databases for use by telemarketers. The only downside (mentioned by Sandy) is that a Wisconsin consumer might have a non-Wisconsin area code. The federal list includes area codes, not zip codes. So, a telemarketer would be able to make a call to a consumer in Wisconsin with a non-Wisconsin area code, as there is no way to tell from the federal list that the non-Wisconsin area code belongs to a Wisconsin resident.

Sandy also sent the email below with other states that use the federal list. Perhaps another state's law will be useful to draft the request for Ripp.

From: Chalmers, Sandy S - DATCP [mailto:Sandy.Chalmers@wisconsin.gov]

Sent: Friday, October 21, 2011 10:43 AM

To: Kunkel, Mark

Cc: Moll, Keeley A - DATCP

Subject: States using federal do not call registry

Here are a few of the states that are using the federal do not call registry. Not all of these states require that telemarketers have a license.

Kentucky
Missouri
Oregon
Georgia
California

Sandy Chalmers

Administrator, Division of Trade and Consumer Protection
Department of Agriculture, Trade and Consumer Protection
Ph 608.224.4929
Fx 608.224.4939
sandy.chalmers@wisconsin.gov

646.361-365

10/21/2011

UNITED STATES CODE SERVICE
Copyright © 2011 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** Current through PL 112-39, approved 10/12/2011 ***

TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS
CHAPTER 5. WIRE OR RADIO COMMUNICATION
COMMON CARRIERS
COMMON CARRIER REGULATION

47 USCS § 227

§ 227. Restrictions on use of telephone equipment

(a) Definitions. As used in this section--

(1) The term "automatic telephone dialing system" means equipment which has the capacity--

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and
(B) to dial such numbers.

(2) The term "established business relationship", for purposes only of subsection (b)(1)(C)(i), shall have the meaning given the term in section 64.1200 of title 47, Code of Federal Regulations, as in effect on January 1, 2003, except that--

(A) such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber; and

(B) an established business relationship shall be subject to any time limitation established pursuant to paragraph (2)(G)[D].

(3) The term "telephone facsimile machine" means equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(4) The term "telephone solicitation" means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

(5) The term "unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.

(c) Protection of subscriber privacy rights.

(1) Rulemaking proceeding required. Within 120 days after the date of enactment of this section [enacted Dec. 20, 1991], the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The

proceeding shall--

- (A) compare and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, industry-based or company-specific 'do not call' systems, and any other alternatives, individually or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;
 - (B) evaluate the categories of public and private entities that would have the capacity to establish and administer such methods and procedures;
 - (C) consider whether different methods and procedures may apply for local telephone solicitations, such as local telephone solicitations of small businesses or holders of second class mail permits;
 - (D) consider whether there is a need for additional Commission authority to further restrict telephone solicitations, including those calls exempted under subsection (a)(3) of this section, and, if such a finding is made and supported by the record, propose specific restrictions to the Congress; and
 - (E) develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section.
- (2) Regulations. Not later than 9 months after the date of enactment of this section [enacted Dec. 20, 1991], the Commission shall conclude the rulemaking proceeding initiated under paragraph (1) and shall prescribe regulations to implement methods and procedures for protecting the privacy rights described in such paragraph in an efficient, effective, and economic manner and without the imposition of any additional charge to telephone subscribers.
- (3) Use of database permitted. The regulations required by paragraph (2) may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase. If the Commission determines to require such a database, such regulations shall--
- (A) specify a method by which the Commission will select an entity to administer such database;
 - (B) require each common carrier providing telephone exchange service, in accordance with regulations prescribed by the Commission, to inform subscribers for telephone exchange service of the opportunity to provide notification, in accordance with regulations established under this paragraph, that such subscriber objects to receiving telephone solicitations;
 - (C) specify the methods by which each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph (A), and (ii) the methods by which such right may be exercised by the subscriber;
 - (D) specify the methods by which such objections shall be collected and added to the database;
 - (E) prohibit any residential subscriber from being charged for giving or revoking such notification or for being included in a database compiled under this section;
 - (F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database;
 - (G) specify (i) the methods by which any person desiring to make or transmit telephone solicitations will obtain access to the database, by area code or local exchange prefix, as required to avoid calling the telephone numbers of subscribers included in such database; and (ii) the costs to be recovered from such persons;
 - (H) specify the methods for recovering, from persons accessing such database, the costs involved in identifying, collecting, updating, disseminating, and selling, and other activities relating to, the operations of the database that are incurred by the entities carrying out those activities;
 - (I) specify the frequency with which such database will be updated and specify the method by which such updating will take effect for purposes of compliance with the regulations prescribed under this subsection;
 - (J) be designed to enable States to use the database mechanism selected by the Commission for purposes of administering or enforcing State law;
 - (K) prohibit the use of such database for any purpose other than compliance with the requirements of this section and any such State law and specify methods for protection of the privacy rights of persons whose numbers are included in such database; and
 - (L) require each common carrier providing services to any person for the purpose of making telephone

solicitations to notify such person of the requirements of this section and the regulations thereunder.

(4) Considerations required for use of database method. If the Commission determines to require the database mechanism described in paragraph (3), the Commission shall--

(A) in developing procedures for gaining access to the database, consider the different needs of telemarketers conducting business on a national, regional, State, or local level;

(B) develop a fee schedule or price structure for recouping the cost of such database that recognizes such differences and--

(i) reflect the relative costs of providing a national, regional, State, or local list of phone numbers of subscribers who object to receiving telephone solicitations;

(ii) reflect the relative costs of providing such lists on paper or electronic media; and

(iii) not place an unreasonable financial burden on small businesses; and

(C) consider (i) whether the needs of telemarketers operating on a local basis could be met through special markings of area white pages directories, and (ii) if such directories are needed as an adjunct to database lists prepared by area code and local exchange prefix.

(f) Effect on State law.

(1) State law not preempted. Except for the standards prescribed under subsection (d) and subject to paragraph

(2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits--

(A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;

(B) the use of automatic telephone dialing systems;

(C) the use of artificial or prerecorded voice messages; or

(D) the making of telephone solicitations.

(2) State use of databases. If, pursuant to subsection (c)(3), the Commission requires the establishment of a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, a State or local authority may not, in its regulation of telephone solicitations, require the use of any database, list, or listing system that does not include the part of such single national database that relates to such State.

History:

(June 19, 1934, ch 652, Title II, § 227, as added Dec. 20, 1991, P.L. 102-243, § 3, 105 Stat. 2395; Oct. 28, 1992, P.L. 102-556, Title IV, § 402, 106 Stat. 4194; Oct. 25, 1994, P.L. 103-414, Title III, § 303(a)(11), (12), 108 Stat. 4294; Dec. 16, 2003, P.L. 108-187, § 12, 117 Stat. 2717; July 9, 2005, P.L. 109-21, §§ 2(a)-(g), 3, 119 Stat. 359, 362.)

(As amended Dec. 22, 2010, P.L. 111-331, § 2, 124 Stat. 3572.)

Kunkel, Mark

From: Kunkel, Mark
Sent: Thursday, November 03, 2011 11:32 AM
To: Kunkel, Mark
Subject: Federal law exceptions

The federal law prohibition on telephone solicitation does not apply to businesses. The prohibition also does not apply if a seller of goods or services has obtained a person's written agreement authorizing such calls to the person, or if a seller has an established business relationship with a person and the person has not stated that the person does not wish to receive such calls. The regulations define "established business relationship" as a relationship between a seller and consumer based on either of the following: 1) a purchase, rental, lease, or financial transaction within 18 months immediately preceding the date of the telemarketing call; or 2) the consumer's inquiry or application regarding goods or services offered by the seller within 3 months immediately preceding the date of the telemarketing call. In addition, the prohibition also does not apply to telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller.

16 CFR 310 (b) (1) (iii) (B)

abusive telemarketing actor practices

- initiating call to person's
telephone # on "do-not-call"
registry

Exception - 16 CFR 310.6 (b)
(7)

telephone calls btw a

telemarketer & a business
are not subject to
rule.

(except for retail sale of
non durable office or
cleaning supplies)

↓
but these calls are
except from "do not call"
prohibition -



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3314/P1

MDK:.....

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN
11-3

Gen Cat

Sac & cjs

d-note

- 1 AN ACT...; relating to: the prohibition on telephone solicitations to residential
2 customers.

Analysis by the Legislative Reference Bureau

Current law regulates "telephone solicitation," which is defined as the unsolicited initiation of a telephone conversation for the purpose of encouraging the recipient of the telephone call to purchase property, goods, or services. Current law generally prohibits a telephone solicitor, or employee or contractor of a telephone solicitor, from making a telephone solicitation to a residential customer if the customer's landline or wireless telephone number is included in a nonsolicitation directory maintained by the Department of Agriculture, Trade and Consumer Protection (DATCP), which lists residential customers who do not wish to receive telephone solicitations. Current law exempts the following from the prohibition: 1) telephone solicitations made by nonprofit organizations; 2) telephone solicitations made in response to a recipient's request; and 3) telephone solicitations made to current clients of the person selling property, goods, or service that are the reason for the solicitation. Current law requires DATCP to promulgate rules requiring that telephone solicitors register with DATCP and pay initial registration and annual registration renewal fees to DATCP, which DATCP must use for establishing and maintaining the nonsolicitation directory, as well as for consumer protection and consumer information and education. Current law prohibits a telephone solicitor who is not registered from requiring that employees or contractors make telephone solicitations in this state. Current law also provides that if a residential customer does not biennially renew his or her listing in the nonsolicitation directory, DATCP must eliminate the customer's telephone number from the directory.

the prohibition
if the recipient's
encouraging
in

Federal law also regulates telephone solicitations by authorizing the Federal Trade Commission (FTC) to prohibit deceptive and abusive telemarketing acts or practices. Under that authority, the FTC has promulgated a regulation that, with certain exceptions, prohibits a telemarketer from initiating a telephone call to induce the purchase of goods or services ~~to a person whose~~ telephone number is on a national "do-not-call" registry maintained by the FTC that consists of the telephone numbers of persons who do not wish to receive such calls. Federal law requires telemarketers to pay annual fees in order to access the registry. The FTC allows a person to add a landline or wireless telephone number to the registry through a toll-free number or over the Internet. Under federal law, inclusion of a telephone number to the registry is permanent and a person is not required to periodically renew the inclusion. However, a person may remove a telephone number from the registry and the FTC must periodically review the registry and remove telephone numbers that have been disconnected or reassigned to another person. that person

procedures

This bill eliminates the state's nonsolicitation directory and instead prohibits a telephone solicitor, or employee or contractor of a telephone solicitor, from making a telephone solicitation, as defined under current state law, to a ~~residential customer~~ whose landline or wireless telephone number is included in a "state do-not-call registry," which the bill defines as the portion of the national do-not-call registry that consists of telephone numbers with Wisconsin area codes. The bill's prohibition is subject to the same exemptions as under current state law. The bill requires DATCP to publicize the requirements for a residential customer to add a telephone number to the national do-not-call registry. The bill also eliminates the requirement for telephone solicitors to register with, and pay fees to, DATCP.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 20.115 (1) (im) of the statutes is repealed.

2 SECTION 2. 20.115 (8) (jm) of the statutes is repealed.

3 SECTION 3. 100.52 (1) (c) of the statutes is created to read:

4 100.52 (1) (c) "National do-not-call registry" means the national database
5 established by the federal trade commission pursuant to ^{under} 47 USC 227 (c) (3) that
6 consists of telephone numbers of residential customers who object to receiving
7 telephone solicitations.

8 SECTION 4. 100.52 (1) (e) of the statutes is repealed.

One of the exceptions applies
to telemarketing calls to businesses.

INSERT 3-2

SECTION 5. 100.52 (1) (fm) of the statutes is created to read:

100.52 (1) (fm) "State do-not-call registry" means the portion of the national do-not-call registry that consists of telephone numbers with Wisconsin area codes.

SECTION 6. 100.52 (2) of the statutes is repealed.

SECTION 7. 100.52 (3) (title) and (a) of the statutes are repealed.

SECTION 8. 100.52 (3) (b) of the statutes is renumbered 100.52 (4) (d).

SECTION 9. 100.52 (4) (a) 2. of the statutes is amended to read:

100.52 (4) (a) 2. Make a telephone solicitation to a residential customer if, at the time the solicitation is made, the nonsolicitation directory that is provided or made available to the telephone solicitor under sub. (2) (d) state do-not-call registry includes a listing for the residential customer.

History: 2001 a. 16 ss. 2435 to 2446f, 2819b, 2821b; 2007 a. 226.

SECTION 10. 100.52 (4) (b) (intro.) and 2. of the statutes are consolidated, renumbered 100.52 (4) (b) and amended to read:

100.52 (4) (b) (intro.) A telephone solicitor may not do any of the following: 2. Require require an employee or contractor to make a telephone solicitation that violates par. (a).

History: 2001 a. 16 ss. 2435 to 2446f, 2819b, 2821b; 2007 a. 226.

SECTION 11. 100.52 (4) (b) 1. of the statutes is repealed.

SECTION 12. 100.52 (9) (title) of the statutes is repealed and recreated to read:

100.52 (9) (title) DEPARTMENT DUTIES.

SECTION 13. 100.52 (9) of the statutes is renumbered 100.52 (9) (b).

SECTION 14. 100.52 (9) (a) of the statutes is created to read:

100.52 (9) (a) The department shall publicize the ~~requirements~~ procedures for a residential customer to add a telephone number to the national do-not-call registry.

SECTION 15. 100.55 (3) (b) 3. of the statutes is amended to read:

100.55 (3) (b) 3. Knowingly or negligently utilizing information regarding
consumers who have made an election under 15 USC 1681b (e) to be excluded from
prescreened consumer reports, who have registered their telephone numbers on the
national do-not-call registry as provided in 47 CFR 64.1200, or who are listed in the
nonsolicitation directory under state do-not-call registry, as defined in s. 100.52 (2)

History: 2007 a. 76; 2009 a. 2.

(END)

d-note

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3314/P1ins
MDK:.....

INSERT 3-7:

SECTION 1. 100.52 (4) (a) 2. of the statutes is amended to read:

100.52 (4) (a) 2. Make a telephone solicitation to a residential customer if the
nonsolicitation directory that is provided or made available to the telephone solicitor
under sub. (2) (d) includes a listing for the residential customer telephone number
that, at the time the solicitation is made, is listed on the state do-not-call registry.

History: 2001 a. 16 ss. 2435 to 2446f, 2819b, 2821b; 2007 a. 226.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3314/P1dn
MDK:/:....

- late -

cc

sac & cjs

Rep. Kipp:

Please note the following about this preliminary draft:

1. At your office's request I contacted Sandy Chalmers at DATCP to obtain some guidance on the preliminary draft. Therefore, you may want to have DATCP review the preliminary draft. After you review the preliminary draft, I will prepare a version that can be introduced.

2. The preliminary draft will prohibit, with certain exceptions, a telephone solicitor from making a telephone solicitation to a telephone number in the national do-not-call registry that has a Wisconsin area code. Note that it is possible for a Wisconsin resident to have an area code from a different state. However, at present, the national do-not-call registry does not contain information on the state of residence that is associated with a particular telephone number. Therefore, by requiring reliance on the national do-not-call registry, the preliminary draft does allow telephone solicitors to make telephone solicitations to Wisconsin residents with area codes from other states. I don't know how many Wisconsin residents fall into this category and, if you are interested, you may want to ask whether DATCP has information on this issue.

3. Because the preliminary draft repeals the requirement for DATCP to register telephone solicitors, note that the preliminary draft also repeals the prohibition against unregistered telephone solicitors making telephone solicitations. See the repeal of s. 100.52 (4) (b) 1. procedures

4. Proposed s. 100.52 (9) (a) requires DATCP to publicize the requirements for a residential customer to add a telephone number to the national do-not-call registry. Is that okay?

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

DATCP's input on this issue.

no 9

DATCP may be able to use its

general program operations to fund such publicity. You may want to get

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3314/P1dn
MDK:sac&cjs:jf

November 28, 2011

Rep. Kipp:

Please note the following about this preliminary draft:

1. At your office's request I contacted Sandy Chalmers at DATCP to obtain some guidance on the preliminary draft. Therefore, you may want to have DATCP review the preliminary draft. After you review the preliminary draft, I will prepare a version that can be introduced.
2. The preliminary draft will prohibit, with certain exceptions, a telephone solicitor from making a telephone solicitation to a telephone number in the national do-not-call registry that has a Wisconsin area code. Note that it is possible for a Wisconsin resident to have an area code from a different state. However, at present, the national do-not-call registry does not contain information on the state of residence that is associated with a particular telephone number. Therefore, by requiring reliance on the national do-not-call registry, the preliminary draft does allow telephone solicitors to make telephone solicitations to Wisconsin residents with area codes from other states. I don't know how many Wisconsin residents fall into this category and, if you are interested, you may want to ask whether DATCP has information on this issue.
3. Because the preliminary draft repeals the requirement for DATCP to register telephone solicitors, note that the preliminary draft also repeals the prohibition against unregistered telephone solicitors making telephone solicitations. See the repeal of s. 100.52 (4) (b) 1.
4. Proposed s. 100.52 (9) (a) requires DATCP to publicize the procedures for a residential customer to add a telephone number to the national do-not-call registry. Is that okay? DATCP may be able to use its general program operations to fund such publicity. You may want to get DATCP's input on this issue.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

Kunkel, Mark

From: Kunkel, Mark
Sent: Wednesday, December 14, 2011 9:17 AM
To: Kunkel, Mark
Subject: RE: LRB-3314 instructions

According to Paul Ferguson of LFB (whom I talked with yesterday), in previous years, DATCP has collected from \$1.5 to \$1.9 million in telephone solicitor registration fees. Under s. 20.115 (1) (im), amounts that are specified in the schedule are deducted from the amount received in a year and the amount in the schedule is used for general consumer protection, education and information. (In current fiscal years, a little more than a quarter of a million is specified per year.) The remaining amount is used under s. 20.115 (8) (jm) for the nonsolicitation directory. Usually, that amount is more than necessary for the nonsolicitation directory, and the surplus is periodically lapsed to the general fund or transferred for other purposes. He didn't use the word "transfer" -- that is just my understanding of what happens.

From: Kunkel, Mark
Sent: Monday, December 12, 2011 10:06 AM
To: Kunkel, Mark
Subject: LRB-3314 instructions

Per conversation with Tyler today, redraft to:

1. Ensure DATCP has rule-making authority to enforce bill's requirements.
2. Require telephone solicitors to register with DATCP and pay registration fees and allow DATCP to use fees for enforcement. In other words, go back to current law on those issues.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3314/R1
MDK:sac&cjs:jf

O-note

Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Bu Fri
12-16 pm

RM
has
been
seen

SAV

gen cut

1 AN ACT ~~to repeat~~ 20.115 (1) (im), 20.115 (8) (jm), 100.52 (1) (e), 100.52 (2), 100.52
2 (3) (title) and (a) and 100.52 (4) (b) 1.; **to renumber** 100.52 (3) (b) and 100.52
3 (9); **to consolidate, renumber and amend** 100.52 (4) (b) (intro.) and 2.; **to**
4 **amend** 100.52 (4) (a) 2. and 100.55 (3) (b) 3.; **to repeal and recreate** 100.52
5 (9) (title); and **to create** 100.52 (1) (c), 100.52 (1) (fm) and 100.52 (9) (a) of the
6 statutes; **relating to:** the prohibition on telephone solicitations to residential
7 customers.

and granting rule-making authority
and making an appropriation

Analysis by the Legislative Reference Bureau

Current law regulates "telephone solicitation," which is defined as the unsolicited initiation of a telephone conversation for the purpose of encouraging the recipient of the telephone call to purchase property, goods, or services. Current law generally prohibits a telephone solicitor, or employee or contractor of a telephone solicitor, from making a telephone solicitation to a residential customer if the customer's landline or wireless telephone number is included in a nonsolicitation directory maintained by the Department of Agriculture, Trade and Consumer Protection (DATCP), which lists residential customers who do not wish to receive telephone solicitations. Current law exempts the following from the prohibition: 1) telephone solicitations made by nonprofit organizations; 2) telephone solicitations made in response to a recipient's request; and 3) telephone solicitations made to

current clients of the person selling property, goods, or service that are the reason for the solicitation. Current law requires DATCP to promulgate rules requiring that telephone solicitors register with DATCP and pay initial registration and annual registration renewal fees to DATCP, which DATCP must use for establishing and maintaining the nonsolicitation directory, as well as for consumer protection and consumer information and education. Current law prohibits a telephone solicitor who is not registered from requiring that employees or contractors make telephone solicitations in this state. Current law also provides that if a residential customer does not biennially renew his or her listing in the nonsolicitation directory, DATCP must eliminate the customer's telephone number from the directory.

Federal law also regulates telephone solicitations by authorizing the Federal Trade Commission (FTC) to prohibit deceptive and abusive telemarketing acts or practices. Under that authority, the FTC has promulgated a regulation that, with certain exceptions, prohibits a telemarketer from initiating a telephone call encouraging the purchase of goods or services if the recipient's telephone number is on a national "do-not-call" registry maintained by the FTC that consists of the telephone numbers of persons who do not wish to receive such calls. One of the exceptions applies to telemarketing calls to businesses. Federal law requires telemarketers to pay annual fees in order to access the registry. The FTC allows a person to add a landline or wireless telephone number to the registry through a toll-free number or over the Internet. Under federal law, inclusion of a telephone number in the registry is permanent and a person is not required to periodically renew the inclusion. However, a person may remove a telephone number from the registry and the FTC must periodically review the registry and remove telephone numbers that have been disconnected or reassigned to another person.

This bill eliminates the state's nonsolicitation directory and instead prohibits a telephone solicitor, or employee or contractor of a telephone solicitor, from making a telephone solicitation, as defined under current state law, to a landline or wireless telephone number that is included on a "state do-not-call registry," which the bill defines as the portion of the national do-not-call registry that consists of telephone numbers with Wisconsin area codes. The bill's prohibition is subject to the same exemptions as the prohibition under current state law. The bill requires DATCP to publicize the procedures for a residential customer to add a telephone number to the national do-not-call registry. ~~The bill also eliminates the requirement for telephone solicitors to register with, and pay fees to, DATCP.~~

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.115 (1) (im) of the statutes is repealed.

SECTION 2. 20.115 (8) (jm) of the statutes is repealed.

INSEPT 3-10

1 SECTION 3. 100.52 (1) (c) of the statutes is created to read:

2 100.52 (1) (c) "National do-not-call registry" means the national database
3 established by the federal trade commission under 47 USC 227 (c) (3) that consists
4 of telephone numbers of residential customers who object to receiving telephone
5 solicitations.

6 SECTION 4. 100.52 (1) (e) of the statutes is repealed.

7 SECTION 5. 100.52 (1) (fm) of the statutes is created to read:

8 100.52 (1) (fm) "State do-not-call registry" means the portion of the national
9 do-not-call registry that consists of telephone numbers with Wisconsin area codes.

10 SECTION 6. 100.52 (2) of the statutes is repealed.

11 ~~SECTION 7. 100.52 (3) (title) and (a) of the statutes are repealed.~~

12 SECTION 8. 100.52 (3) (b) of the statutes is renumbered 100.52 (4) (d).

13 SECTION 9. 100.52 (4) (a) 2. of the statutes is amended to read:

14 100.52 (4) (a) 2. Make a telephone solicitation to a residential customer if the
15 nonsolicitation directory that is provided or made available to the telephone solicitor
16 under sub. (2) (d) includes a listing for the residential customer telephone number
17 that, at the time the solicitation is made, is listed on the state do-not-call registry.

18 ~~SECTION 10. 100.52 (4) (b) (intro.) and 2. of the statutes are consolidated,~~
19 ~~renumbered 100.52 (4) (b) and amended to read:~~

20 ~~100.52 (4) (b) A telephone solicitor may not do any of the following: 2. Require~~
21 ~~require an employee or contractor to make a telephone solicitation that violates par.~~
22 ~~(a).~~

23 ~~SECTION 11. 100.52 (4) (b) 1. of the statutes is repealed.~~

24 SECTION 12. 100.52 (9) (title) of the statutes is repealed and recreated to read:

25 100.52 (9) (title) DEPARTMENT DUTIES.

INSEPT 3-10

SECTION 13. 100.52 (9) of the statutes is renumbered 100.52 (9) (b).

SECTION 14. 100.52 (9) (a) of the statutes is created to read:

100.52 (9) (a) The department shall publicize the procedures for a residential customer to add a telephone number to the national do-not-call registry.

SECTION 15. 100.55 (3) (b) 3. of the statutes is amended to read:

100.55 (3) (b) 3. Knowingly or negligently utilizing information regarding consumers who have made an election under 15 USC 1681b (e) to be excluded from prescreened consumer reports, or who have registered their telephone numbers on the national do-not-call registry as provided in 47 CFR 64.1200, ~~or who are listed in the nonsolicitation directory under s. 100.52 (2).~~

(END) .

Note

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3314/lins
MDK:.....

INSERT 2A:

Finally, the bill provides that the initial registration and annual registration renewal fees that are paid by telephone solicitors must be used for DATCP's administration and enforcement of the requirements applicable to telephone solicitors, as well as for consumer protection, information, and education.

INSERT 2-1:

SECTION 1. 20.115 (1) (im) of the statutes is amended to read:

20.115 (1) (im) *Consumer protection; telephone solicitor fees.* The amounts in the schedule from telephone solicitor registration and registration renewal fees paid under the rules promulgated under s. 100.52 (3) (a), for consumer protection and consumer information and education.

History: 1971 c. 125, 215; 1973 c. 90, 299, 333; 1975 c. 39 ss. 78m, 79, 79m, 79n, 732 (1); 1975 c. 224; 1975 c. 394 ss. 1, 27; 1977 c. 29 ss. 112 to 115v, 1650m (1), (4), 1654 (1); 1977 c. 87, 106, 181, 418; 1979 c. 34, 129, 221, 289, 335; 1981 c. 20, 66, 93, 283, 346, 357; 1983 a. 27, 132, 368; 1983 a. 410 ss. 5, 2202 (2); 1985 a. 7, 8, 29, 138, 153, 313; 1987 a. 27, 281, 354; 1987 a. 399 ss. 34 to 38, 38u; 1987 a. 403 s. 256; 1989 a. 31, 219, 227, 282, 284, 335, 336; 1991 a. 39, 269, 309, 315; 1993 a. 16, 166, 243, 437, 456, 497; 1995 a. 27, 42, 79, 460; 1997 a. 27, 192, 252, 264; 1999 a. 5, 9, 55, 185; 2001 a. 16, 38, 56, 103, 109; 2003 a. 33, 38, 133, 326, 327; 2005 a. 25; 2007 a. 20, 125, 223; 2009 a. 28, 90, 145, 293, 401; 2011 a. 32.

SECTION 2. 20.115 (8) (jm) of the statutes is amended to read:

20.115 (8) (jm) *Telephone solicitation regulation.* All moneys received from telephone solicitor registration and registration renewal fees paid under the rules promulgated under s. 100.52 (3) (a) not appropriated under sub. (1) (im) for ~~establishing and maintaining the nonsolicitation directory under administering and~~ enforcing s. 100.52 (2).

History: 1971 c. 125, 215; 1973 c. 90, 299, 333; 1975 c. 39 ss. 78m, 79, 79m, 79n, 732 (1); 1975 c. 224; 1975 c. 394 ss. 1, 27; 1977 c. 29 ss. 112 to 115v, 1650m (1), (4), 1654 (1); 1977 c. 87, 106, 181, 418; 1979 c. 34, 129, 221, 289, 335; 1981 c. 20, 66, 93, 283, 346, 357; 1983 a. 27, 132, 368; 1983 a. 410 ss. 5, 2202 (2); 1985 a. 7, 8, 29, 138, 153, 313; 1987 a. 27, 281, 354; 1987 a. 399 ss. 34 to 38, 38u; 1987 a. 403 s. 256; 1989 a. 31, 219, 227, 282, 284, 335, 336; 1991 a. 39, 269, 309, 315; 1993 a. 16, 166, 243, 437, 456, 497; 1995 a. 27, 42, 79, 460; 1997 a. 27, 192, 252, 264; 1999 a. 5, 9, 55, 185; 2001 a. 16, 38, 56, 103, 109; 2003 a. 33, 38, 133, 326, 327; 2005 a. 25; 2007 a. 20, 125, 223; 2009 a. 28, 90, 145, 293, 401; 2011 a. 32.

INSERT 3-10:

SECTION 3. 100.52 (3) (a) of the statutes is renumbered 100.52 (3) and amended to read:

Registration of telephone solicitors ^{CS}
100.52 (3) The department shall promulgate rules that require any telephone solicitor who requires an employee or contractor to make a telephone solicitation to

1 a residential customer in this state to register with the department, obtain a
2 registration number from the department, and pay ~~a~~ an initial registration fee and
3 an annual registration renewal fee to the department. The ~~amount of the~~
4 ~~registration fee shall be based on the cost of establishing the nonsolicitation~~
5 ~~directory, and the amount that an individual telephone solicitor is required to pay~~
6 ~~shall be based on the number of telephone lines used by the telephone solicitor to~~
7 ~~make telephone solicitations. The rules shall also require a telephone solicitor that~~
8 ~~registers with the department to pay an annual registration renewal fee to the~~
9 ~~department. The amount of the registration renewal fee~~ fees shall be based on the
10 ~~cost of maintaining the nonsolicitation directory~~ amount required to administer and
11 enforce this section and to provide the amounts appropriated under s. 20.115 (1) (im).

12 History: 2001 a. 16 ss. 2435 to 2446f, 2819b, 2821b; 2007 a. 226.

INSERT 3-17:

13 **SECTION 4.** 100.52 (4) (b) 1. of the statutes is amended to read:

14 100.52 (4) (b) 1. Require an employee or contractor to make a telephone
15 solicitation to a person in this state unless the telephone solicitor is registered with
16 the department under the rules promulgated under sub. (3) ~~(a)~~.

17 History: 2001 a. 16 ss. 2435 to 2446f, 2819b, 2821b; 2007 a. 226.

SECTION 5. 100.52 (8) of the statutes is created to read:

18 100.52 (8) RULES. The department may promulgate rules to administer and
19 enforce this section.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3314/1dn

MDK:.....

gs

late

Rep. Ripp:

This version differs from the previous version as follows:

1. This version requires telephone solicitors to register with DATCP and pay initial and renewal registration fees to DATCP, which must use the fees to administer and enforce s. 100.52, rather than to establish and maintain the state's nonsolicitation directory, which the bill eliminates. In addition, the fees must be sufficient to obtain the amounts appropriated under s. 20.115 (1) (im), which are amounts specified in the schedule for consumer protection, information, and education.
2. This version specifies that DATCP can promulgate rules for administering and enforcing s. 100.52

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3314/1dn
MDK:cjs:jf

December 15, 2011

Rep. Ripp:

This version differs from the previous version as follows:

1. This version requires telephone solicitors to register with DATCP and pay initial and renewal registration fees to DATCP, which must use the fees to administer and enforce s. 100.52, rather than to establish and maintain the state's nonsolicitation directory, which the bill eliminates. In addition, the fees must be sufficient to obtain the amounts appropriated under s. 20.115 (1) (im), which are amounts specified in the schedule for consumer protection, information, and education.
2. This version specifies that DATCP can promulgate rules for administering and enforcing s. 100.52

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

Kunkel, Mark

From: Chalmers, Sandy S - DATCP [Sandy.Chalmers@wisconsin.gov]
Sent: Friday, January 20, 2012 9:08 AM
To: Kunkel, Mark
Cc: Reinen, Michelle J - DATCP; Ghilardi, David J - DATCP; Sliwa, Darlene W - DATCP
Subject: RE: Changes to LRB 3314

Mark –

On the first item, we agree with your suggestion.

On the second item, we would add that proof be provided at the time of registration and renewal, or upon request. Proof would show that they have signed up for the federal list and have continued to get updated lists.

Sandy Chalmers

Administrator, Division of Trade and Consumer Protection
Department of Agriculture, Trade and Consumer Protection
Ph 608.224.4929
Fx 608.224.4939
sandy.chalmers@wisconsin.gov

From: Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]
Sent: Monday, January 16, 2012 2:16 PM
To: Chalmers, Sandy S - DATCP
Subject: RE: Changes to LRB 3314

Sandy:

You said the following in the email below:

"We are changing our request to the following:

- A prohibition against telemarketers using a list not legally obtained from the feds.
- A registration requirement demanding the applicant show it has legally obtained the list."

✓ Regarding the 1st item, I would create s. 100.52 (4) (b) 3. in the bill, which would say that a telephone solicitor may not use or possess a copy of the state do-not-call registry that the telephone solicitor has obtained in violation of federal law. Is that okay?

Regarding the 2nd item, I would revise the bill to say that DATCP's rules on the registration of telephone solicitors shall require a telephone solicitor to periodically provide DATCP with proof that the telephone solicitor has complied with federal law in obtaining copies of the state do-not-call registry. Is "periodically" okay, or should it be "annually," to coincide with payment of annual registration fees? Also, I assume that proof must be provided on an annual or other periodic basis, as telephone solicitors will obtain periodic updates of the state registry. Is that correct?

-- Mark

From: Chalmers, Sandy S - DATCP [mailto:Sandy.Chalmers@wisconsin.gov]
Sent: Friday, January 13, 2012 11:23 AM
To: Kunkel, Mark
Cc: Wenzlaff, Tyler; Moll, Keeley A - DATCP
Subject: RE: Changes to LRB 3314

1/25/2012

Mark – see our comments below.

Sandy Chalmers

Administrator, Division of Trade and Consumer Protection
Department of Agriculture, Trade and Consumer Protection
Ph 608.224.4929
Fx 608.224.4939
sandy.chalmers@wisconsin.gov

From: Kunkel, Mark [<mailto:Mark.Kunkel@legis.wisconsin.gov>]
Sent: Thursday, January 12, 2012 3:34 PM
To: Chalmers, Sandy S - DATCP
Subject: FW: Changes to LRB 3314

Here is the email that I mentioned in my voice mail.

-- Mark

From: Wenzlaff, Tyler
Sent: Wednesday, January 11, 2012 2:55 PM
To: Kunkel, Mark
Subject: RE: Changes to LRB 3314

Sandy Chalmers

Administrator, Division of Trade and Consumer Protection
Department of Agriculture, Trade and Consumer Protection
Ph 608.224.4929
Fx 608.224.4939
sandy.chalmers@wisconsin.gov

From: Kunkel, Mark
Sent: Wednesday, January 11, 2012 1:30 PM
To: Wenzlaff, Tyler
Subject: RE: Changes to LRB 3314

Tyler:

Regarding "Incorporate the State No Call List with Federal List," I'm not exactly sure what "merge" means. Also, is the merger a one-time event or an ongoing duty? Is there someone I can contact at DATCP to get clarification?

This would be a one-time event. We would like to add the numbers currently on the state no-call list to the federal list, rather than asking 2.2 million people to re-register on the federal list. FTC confirms we can add the numbers on the state list to the federal list.

We would like to have statutory authority to move the phone numbers currently on the state list to the federal list.

Regarding "Prohibition on selling the No Call List," the bill eliminates the requirement for DATCP to maintain a directory. If the directory is eliminated, telephone solicitors will no longer receive copies of the directory, and I'm not sure what it is that you want to prohibit telephone solicitors from selling. Can I speak with someone at DATCP for clarification?

We agree that you are making a good point. The way the bill is written, that portion of the federal list that includes Wisconsin area codes "becomes" the state list. Telemarketers would get the list from the feds. The feds prohibit reselling the list to another telemarketer or using the list for purposes not intended by law.

1/25/2012

If a telemarketer operating in Wisconsin did resell the list or otherwise misuse it, the feds may not be inclined to action in localized circumstances. At this point we would want a state law that prohibits such an act.

We are changing our request to the following:

- A prohibition against telemarketers using a list not legally obtained from the feds.
- A registration requirement demanding the applicant show it has legally obtained the list.

-- Mark

From: Wenzlaff, Tyler
Sent: Wednesday, January 11, 2012 1:13 PM
To: Kunkel, Mark
Subject: RE: Changes to LRB 3314

Comments on LRB 3314

1. Budgeting

We believe the draft provides DATCP with adequate flexibility.

2. Incorporate State No Call List with Federal List

In making the transition from a Wisconsin No Call List to the FTC's Do Not Call List, it would be easiest for consumers if we merged the numbers on the state list with the federal list. FTC is willing to coordinate with us on this. However, DATCP is unsure whether we have the authority to take this action.

We recommend adding language directing DATCP to merge the Wisconsin No Call list with the FTC's Do Not Call list.

2. Prohibition on selling the No Call List

We recommend amending the draft to retain the language repealed in s. 100.52 (2)(d):

"A telephone solicitor who receives a copy of the directory, or to whom the directory is made available by electronic transmission, under this paragraph may not solicit or accept from any person, directly or indirectly, anything of value in exchange for providing the person with any information included in the copy."

3. Use of Term "Telephone Lines" in Wisconsin No Call Law

The current statutory language bases telephone solicitor fees on the number of telephone lines, which is not consistent with today's technology, such as computerized dialing.

The bureau needs time to research this subject. The concept of "lines" is likely outdated and we need to evaluate current technology such as VOIP and Google. One solution is to amend the statute to base solicitor fees on the number of lines *or* "some other methodology established by the department through rule."

From: Kunkel, Mark
Sent: Wednesday, January 11, 2012 1:12 PM
To: Wenzlaff, Tyler
Subject: RE: Changes to LRB 3314

I'm having a hard time opening the attached Word document. Can you attach it again and resend it?

From: Wenzlaff, Tyler
Sent: Wednesday, January 11, 2012 11:55 AM
To: Kunkel, Mark
Subject: Changes to LRB 3314

Recommended changes to LRB 3314.

Let me know if you have any questions. Thank you.

Tyler Wenzlaff
Office of Wisconsin State Representative Keith Ripp
47th Assembly District

<< OLE Object: Picture (Metafile) >>

100.52 Telephone solicitations.**(1) DEFINITIONS.**

(b) "Basic local exchange service" has the meaning in s. 196.01 (1g).

(bm) "Commercial mobile service" has the meaning given in s.

196.01 (2i). Retail do not call

(d) "Nonresidential customer" means a person, other than a residential customer, who is furnished with telecommunications service by a telecommunications utility.

~~(e) "Nonsolicitation directory" means the directory established in rules promulgated by the department under sub. (2) (b).~~

(f) "Residential customer" means an individual who is furnished with basic local exchange service or commercial mobile service by a telecommunications utility, but does not include an individual who operates a business at his or her residence.

state D.N.C.
(g) "Telecommunications service" has the meaning given in s. 196.01 (9m).

(h) "Telecommunications utility" has the meaning given in s. 196.01 (10).

(i) "Telephone solicitation" means the unsolicited initiation of a telephone conversation for the purpose of encouraging the recipient of the telephone call to purchase property, goods or services.

(j) "Telephone solicitor" means a person, other than a nonprofit organization or an employee or contractor of a nonprofit organization, that employs or contracts with an individual to make a telephone solicitation.

(2) NONSOLICITATION DIRECTORY LISTING.

(a) Upon a request by a residential customer, the department shall include in the nonsolicitation directory a listing indicating that the residential customer does not want to receive any telephone solicitation made on behalf of a telephone solicitor.

(b) The department shall promulgate rules for establishing, maintaining, and semiannually updating a directory that includes listings of residential customers who do not wish to receive telephone solicitations made on behalf of telephone solicitors. The rules promulgated under this paragraph shall establish requirements and procedures for a residential customer to request a listing in the directory. The rules shall also require a residential customer who requests a listing in the directory to notify the department on a biennial basis if the residential customer wishes to continue to be included in the directory. The department shall eliminate a residential customer from the directory if the customer does not make the biennial notification.

(c) Except for copies of the nonsolicitation directory that are provided to registered telephone solicitors under par. (d), the nonsolicitation directory is not subject to inspection, copying, or

receipt under s. 19.35 (1) and may not be released by the department.

- (d) The department shall, on a semiannual basis, make the nonsolicitation directory available by electronic transmission only to telephone solicitors who are registered under sub. (3). Upon the request of a telephone solicitor registered under sub. (3), the department shall also provide a printed copy of the nonsolicitation directory to the telephone solicitor. A telephone solicitor who receives a copy of the directory, or to whom the directory is made available by electronic transmission, under this paragraph may not solicit or accept from any person, directly or indirectly, anything of value in exchange for providing the person with any information included in the copy.

(3) REGISTRATION OF TELEPHONE SOLICITORS.

- (a) The department shall promulgate rules that require any telephone solicitor who requires an employee or contractor to make a telephone solicitation to a residential customer in this state to register with the department, obtain a registration number from the department, and pay a registration fee to the department. The amount of the registration fee shall be based on the cost of establishing the nonsolicitation directory, and the amount that an individual telephone solicitor is required to pay shall be based on the number of telephone lines used by the telephone solicitor to make telephone solicitations. The rules shall also require a telephone solicitor that registers with the department to pay an annual registration renewal fee to the department. The amount of the registration renewal fee shall be based on the cost of maintaining the nonsolicitation directory.
- (b) The department shall promulgate rules that require an individual who makes a telephone solicitation on behalf of a telephone solicitor to identify at the beginning of the telephone conversation each of the following:
1. The telephone solicitor.
 2. If different than the telephone solicitor, the person selling the property, goods, or services, or receiving the contribution, donation, grant, or pledge of money, credit, property, or other thing of any kind, that is the reason for the telephone solicitation.

(4) TELEPHONE SOLICITOR REQUIREMENTS.

- (a) A telephone solicitor or an employee or contractor of a telephone solicitor may not do any of the following:
1. Use an electronically prerecorded message in telephone solicitation without the consent of the recipient of the telephone call.
 2. Make a telephone solicitation to a residential customer if the nonsolicitation directory that is provided or made available to the telephone solicitor under sub. (2) (d) includes a listing for the residential customer.
 3. Make a telephone solicitation to a nonresidential customer if the nonresidential customer has provided notice by mail to the telephone solicitor that the nonresidential customer does not wish to receive telephone solicitations.

- (b) A telephone solicitor may not do any of the following:
 - 1. Require an employee or contractor to make a telephone solicitation to a person in this state unless the telephone solicitor is registered with the department under the rules promulgated under sub. (3) (a).
 - 2. Require an employee or contractor to make a telephone solicitation that violates par. (a).
- (c) A telephone solicitor or employee or contractor of a telephone solicitor that makes a telephone solicitation to a nonresidential customer shall, upon the request of the nonresidential customer, provide the mailing address for notifying the telephone solicitor that the nonresidential customer does not wish to receive telephone solicitations.
- (6) EXCEPTIONS. Subsections (4) (a) 2. and 3. do not apply to a telephone solicitation that satisfies any of the following:
 - (a) The telephone solicitation is made to a recipient in response to the recipient's request for the telephone solicitation.
 - (b) The telephone solicitation is made to a recipient who is a current client of the person selling the property, goods, or services that is the reason for the telephone solicitation. This paragraph does not apply if the recipient is a current client of an affiliate of such a person, but is not a current client of such a person.
- (7) TERRITORIAL APPLICATION. This section applies to any interstate telephone solicitation received by a person in this state and to any intrastate telephone solicitation.
- (9) ENFORCEMENT. The department shall investigate violations of this section and may bring an action for temporary or permanent injunctive or other relief for any violation of this section.
- (10) PENALTIES.
 - (a) Except as provided in par. (b), a person who violates this section may be required to forfeit \$100 for each violation.
 - (b) A telephone solicitor that violates sub. (4) may be required to forfeit not more than \$100 for each violation.

History: 2001 a. 16 ss. 2435 to 2446f, 2819b, 2821b; 2007 a. 226.
Cross-reference: See also ch. ATCP 127, Wis. adm. code.

100.525 Telephone records; obtaining, selling, or receiving without consent.

- (1) In this section:
 - (a) "Caller identification record" means a record that is delivered electronically to the recipient of a telephone call simultaneously with the reception of the telephone call and that indicates the telephone number from which the telephone call was initiated or similar information regarding the telephone call.
 - (am) "Customer" means a person who purchases telephone service.
 - (b) "Telephone record" means a record in written, electronic, or oral form, except a caller identification record, that is created by a telephone service provider and that contains any of the following information with respect to a customer:
 - 1. Telephone numbers that have been dialed by the customer.

2. Telephone numbers pertaining to calls made to the customer.
 3. The time when calls were made by the customer or to the customer.
 4. The duration of calls made by the customer or to the customer.
- (c) "Telephone service" means the conveyance of 2-way voice communication in analog, digital, or other form by any medium, including wire, cable, fiber optics, cellular, broadband personal communications services, or other wireless technologies, satellite, microwave, or at any frequency over any part of the electromagnetic spectrum. "Telephone service" includes the conveyance of voice communication over the Internet and telephone relay service.
- (d) "Telephone service provider" means a person who provides telephone service to a customer.
- (2) No person may do any of the following:
- (a) Obtain, or attempt to obtain, a telephone record that pertains to a customer who is a resident of this state, without the customer's consent, by doing any of the following:
 1. Making a false statement to an agent of a telephone service provider.
 2. Making a false statement to a customer of a telephone service provider.
 3. Knowingly providing to a telephone service provider a document that is fraudulent, that has been lost or stolen, or that has been obtained by fraud.
 - (b) Ask another person to obtain a telephone record knowing that the person will obtain the telephone record in a manner prohibited under this section.
 - (c) Sell or offer to sell a telephone record obtained in a manner prohibited under this section.
- (3)
- (a) A person who violates this section is guilty of a Class I felony if the violation involves one telephone record.
 - (b) A person who violates this section is guilty of a Class G felony if the violation involves 2 or more telephone records.
 - (c) A person who violates this section is guilty of a Class E felony if the violation involves more than 10 telephone records.
- (4)
- (a) In addition to the penalties authorized under sub. (3), a person who violates this section may be required to forfeit personal property used or intended to be used in the violation.
 - (b) In an action to enforce this section, the court shall award to a person who is the subject of a telephone record involved in a violation of this section all of the following:
 1. The amount of the person's pecuniary loss suffered because of a violation of this section, if proof of the loss is submitted to the satisfaction of the court, or \$1,000, whichever is greater.
 2. The amount of any gain to the violator as a result of the violation.

- (5)** This section does not apply to any of the following:
- (a)** Action by a law enforcement agency in connection with the official duties of the law enforcement agency.
 - (b)** A disclosure by a telephone service provider, if any of the following applies:
 - 1. The telephone service provider reasonably believes the disclosure is necessary to do any of the following:
 - a.** Provide telephone service to a customer.
 - b.** Protect an individual from fraudulent, abusive, or unlawful use of telephone service or a telephone record.
 - 2. The disclosure is made to the National Center for Missing and Exploited Children.
 - 3. The disclosure is authorized by state or federal law or regulation.
- (6)** A violation of this section may also constitute an unfair method of competition or unfair trade practice under s. 100.20 or a fraudulent representation under s. 100.18.

History: 2005 a. 261; 2007 a. 97.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3314/1
MDK:sac&cjs:jf

2011 BILL

stays

2
has been
run

SAV

gen cat

1 AN ACT ~~to repeal~~ 100.52 (1) (e) and 100.52 (2); **to renumber** 100.52 (3) (b) and
2 100.52 (9); **to renumber and amend** 100.52 (3) (a); **to amend** 20.115 (1) (im),
3 20.115 (8) (jm), 100.52 (4) (a) 2., 100.52 (4) (b) 1. and 100.55 (3) (b) 3.; **to repeal**
4 **and recreate** 100.52 (9) (title); and **to create** 100.52 (1) (c), 100.52 (1) (fm),
5 100.52 (8) and 100.52 (9) (a) of the statutes; **relating to:** the prohibition on
6 telephone solicitations to residential customers, granting rule-making
7 authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

Current law regulates "telephone solicitation," which is defined as the unsolicited initiation of a telephone conversation for the purpose of encouraging the recipient of the telephone call to purchase property, goods, or services. Current law generally prohibits a telephone solicitor, or employee or contractor of a telephone solicitor, from making a telephone solicitation to a residential customer if the customer's landline or wireless telephone number is included in a nonsolicitation directory maintained by the Department of Agriculture, Trade and Consumer Protection (DATCP), which lists residential customers who do not wish to receive telephone solicitations. Current law exempts the following from the prohibition: 1) telephone solicitations made by nonprofit organizations; 2) telephone solicitations made in response to a recipient's request; and 3) telephone solicitations made to

BILL

current clients of the person selling property, goods, or service that are the reason for the solicitation. Current law requires DATCP to promulgate rules requiring that telephone solicitors register with DATCP and pay initial registration and annual registration renewal fees to DATCP, which DATCP must use for establishing and maintaining the nonsolicitation directory, as well as for consumer protection, information, and education. Current law prohibits a telephone solicitor who is not registered from requiring that employees or contractors make telephone solicitations in this state. Current law also provides that if a residential customer does not biennially renew his or her listing in the nonsolicitation directory, DATCP must eliminate the customer's telephone number from the directory.

Federal law also regulates telephone solicitations by authorizing the Federal Trade Commission (FTC) to prohibit deceptive and abusive telemarketing acts or practices. Under that authority, the FTC has promulgated a regulation that, with certain exceptions, prohibits a telemarketer from initiating a telephone call encouraging the purchase of goods or services if the recipient's telephone number is on a national "do-not-call" registry maintained by the FTC that consists of the telephone numbers of persons who do not wish to receive such calls. One of the exceptions applies to telemarketing calls to businesses. Federal law requires telemarketers to pay annual fees in order to access the registry. The FTC allows a person to add a landline or wireless telephone number to the registry through a toll-free number or over the Internet. Under federal law, inclusion of a telephone number in the registry is permanent and a person is not required to periodically renew the inclusion. However, a person may remove a telephone number from the registry and the FTC must periodically review the registry and remove telephone numbers that have been disconnected or reassigned to another person.

This bill eliminates the state's nonsolicitation directory and instead prohibits a telephone solicitor, or employee or contractor of a telephone solicitor, from making a telephone solicitation, as defined under current state law, to a landline or wireless telephone number that is included on a "state do-not-call registry," which the bill defines as the portion of the national do-not-call registry that consists of telephone numbers with Wisconsin area codes. The bill's prohibition is subject to the same exemptions as the prohibition under current state law. The bill requires DATCP to publicize the procedures for a residential customer to add a telephone number to the national do-not-call registry. Finally, the bill provides that the initial registration and annual registration renewal fees that are paid by telephone solicitors must be used for DATCP's administration and enforcement of the requirements applicable to telephone solicitors, as well as for consumer protection, information, and education.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.115 (1) (im) of the statutes is amended to read:

INSERT 2B

INSERT
2A

BILL

1 20.115 (1) (im) *Consumer protection; telephone solicitor fees.* The amounts in
2 the schedule from telephone solicitor registration and registration renewal fees paid
3 under the rules promulgated under s. 100.52 (3) (a), for consumer protection and
4 consumer information and education.

5 **SECTION 2.** 20.115 (8) (jm) of the statutes is amended to read:

6 20.115 (8) (jm) *Telephone solicitation regulation.* All moneys received from
7 telephone solicitor registration and registration renewal fees paid under the rules
8 promulgated under s. 100.52 (3) (a) not appropriated under sub. (1) (im) for
9 establishing and maintaining the nonsolicitation directory under administering and
10 enforcing s. 100.52 (2).

11 **SECTION 3.** 100.52 (1) (c) of the statutes is created to read:

12 100.52 (1) (c) "National do-not-call registry" means the national database
13 established by the federal trade commission under 47 USC 227 (c) (3) that consists
14 of telephone numbers of residential customers who object to receiving telephone
15 solicitations.

16 **SECTION 4.** 100.52 (1) (e) of the statutes is repealed.

17 **SECTION 5.** 100.52 (1) (fm) of the statutes is created to read:

18 100.52 (1) (fm) "State do-not-call registry" means the portion of the national
19 do-not-call registry that consists of telephone numbers with Wisconsin area codes.

20 **SECTION 6.** 100.52 (2) of the statutes is repealed.

21 **SECTION 7.** 100.52 (3) (a) of the statutes is renumbered 100.52 (3) and amended
22 to read:

23 100.52 (3) **REGISTRATION OF TELEPHONE SOLICITORS.** The department shall
24 promulgate rules that require any telephone solicitor who requires an employee or
25 contractor to make a telephone solicitation to a residential customer in this state to

INSEAT 3-19

BILL

INSERT 4-8

INSERT
4-6

1 register with the department, obtain a registration number from the department,
2 and pay ~~a~~ an initial registration fee and an annual registration renewal fee to the
3 department. ~~The amount of the registration fee shall be based on the cost of~~
4 ~~establishing the nonsolicitation directory, and the amount that an individual~~
5 ~~telephone solicitor is required to pay shall be based on the number of telephone lines~~
6 ~~used by the telephone solicitor to make telephone solicitations. The rules shall also~~
7 ~~require a telephone solicitor that registers with the department to pay an annual~~
8 ~~registration renewal fee to the department. The amount of the registration renewal~~
9 ~~fee fees shall be based on the cost of maintaining the nonsolicitation directory~~
10 ~~amount required to administer and enforce this section and to provide the amounts~~
11 ~~appropriated under s. 20.115 (1) (im).~~

PLAIN

PLAIN

12 SECTION 8. 100.52 (3) (b) of the statutes is renumbered 100.52 (4) (d).

13 SECTION 9. 100.52 (4) (a) 2. of the statutes is amended to read:

14 100.52 (4) (a) 2. Make a telephone solicitation to a residential customer if the
15 nonsolicitation directory that is provided or made available to the telephone solicitor
16 under sub. (2) (d) includes a listing for the residential customer telephone number
17 that, at the time the solicitation is made, is listed on the state do-not-call registry.

18 SECTION 10. 100.52 (4) (b) 1. of the statutes is amended to read:

19 100.52 (4) (b) 1. Require an employee or contractor to make a telephone
20 solicitation to a person in this state unless the telephone solicitor is registered with
21 the department under the rules promulgated under sub. (3) (a).

22 SECTION 11. 100.52 (8) of the statutes is created to read:

23 100.52 (8) RULES. The department may promulgate rules to administer and
24 enforce this section.

25 SECTION 12. 100.52 (9) (title) of the statutes is repealed and recreated to read:

INSERT 4-21

BILL

1 100.52 **(9)** (title) DEPARTMENT DUTIES.

2 **SECTION 13.** 100.52 (9) of the statutes is renumbered 100.52 (9) (b).

3 **SECTION 14.** 100.52 (9) (a)^x of the statutes is created to read:

4 100.52 (9) (a) The department shall publicize the procedures for a residential
5 customer to add a telephone number to the national do-not-call registry.

6 **SECTION 15.** 100.55 (3) (b) 3. ^x of the statutes is amended to read:

100.55 (3) (b) 3. Knowingly or negligently utilizing information regarding consumers who have made an election under 15 USC 1681b (e) to be excluded from prescreened consumer reports, or who have registered their telephone numbers on the national do-not-call registry as provided in 47 CFR 64.1200, ~~or who are listed in the nonsolicitation directory under s. 100.52 (2).~~

12 (END)

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3314/2ins
MDK:.....

INSERT 2A: *the*

The bill allows DATCP to cooperate with FTC to add telephone numbers that were in the state's nonsolicitation directory to the national do-not-call registry.

INSERT 2B:

The bill allows DATCP to base the amount of a fee that a telephone solicitor must pay on a methodology established by rule, in addition to basing the amount on the number of telephone lines used by the telephone solicitor to make solicitations, which is the basis allowed under current law. In addition, the bill requires that DATCP's rules require a telephone solicitor to provide DATCP with proof that the telephone solicitor has complied with federal law in obtaining copies or updated versions of the state do-not-call registry. The proof must be provided upon initial registration and annual renewal, as well as any other time upon DATCP's request. Finally, the bill prohibits a telephone solicitor from using or possessing a copy or updated version of the state do-not-call registry that the telephone solicitor has obtained in violation of federal law.

INSERT 3-19:

SECTION 1. 100.52 (1m) of the statutes is created to read:

100.52 (1m) ~~may~~ *NATIONAL* DO-NOT-CALL REGISTRY. The department may cooperate with the federal trade commission to add telephone numbers included in the nonsolicitation directory, as defined in s. 100.52 (1) (e), 2009 stats., to the national do-not-call registry.

INSERT 4-6:

or some other methodology established by the department by rule

INSERT 4-8: *the time of*

, at the time of initial registration and annual renewal and any other time upon request of the department, provide the department with proof that telephone solicitor has complied with federal law in obtaining copies and updated versions of the state do-not-call registry

INSERT 4-21:

× ✓ ^

✓

1 **SECTION 2.** 100.52 (4) (b) 3. of the statutes is created to read:
2 100.52 (4) (b) 3. Use or possess a copy or updated version of the state
3 do-not-call registry that the telephone solicitor has obtained in violation of federal
4 law.

Barman, Mike

From: Rep.Ripp
Sent: Monday, January 30, 2012 12:19 PM
To: Barman, Mike
Subject: RE: LRB-3314/2

Mike,

Please have DOA review the draft and ask the appropriate agency to prepare a fiscal estimate. Thank you.

Sincerely,

Keith Ripp
Wisconsin State Representative
47th Assembly District

From: Barman, Mike
Sent: Monday, January 30, 2012 12:17 PM
To: Wenzlaff, Tyler
Cc: Rep.Ripp
Subject: LRB-3314/2

Good morning,

I received a call from the "Fiscal Estimate Coordinator" at DOA this morning. She said you were inquiring about the fiscal impact of LRB-3314/2.

The LRB does not make drafts available to DOA until after the draft is officially introduced by the Chief Clerk's office and only if the LRB drafting attorney has "tagged" the bill as needing a fiscal estimate.

Please let me know if you would like DOA to review the draft and assign it to the appropriate agencies for FE preparation.

Early FE's are done be special request only, normally the FE process does not begin until after the draft is introduced.

Thanks,

Mike Barman (Lead Program Assistant)
State of Wisconsin - Legislative Reference Bureau
Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

Kunkel, Mark

From: Wenzlaff, Tyler
Sent: Monday, February 06, 2012 1:48 PM
To: Kunkel, Mark
Subject: RE: LRB 3314/2 - relating to the prohibition on telephone solicitations
Perfect, thanks.

From: Kunkel, Mark
Sent: Monday, February 06, 2012 1:47 PM
To: Wenzlaff, Tyler
Subject: RE: LRB 3314/2 - relating to the prohibition on telephone solicitations

If you want a delay of about 3 months, we normally handle that by delaying to the first day of the 4th month beginning after publication. Is that okay?

From: Wenzlaff, Tyler
Sent: Monday, February 06, 2012 1:45 PM
To: Kunkel, Mark
Subject: LRB 3314/2 - relating to the prohibition on telephone solicitations

Mark,

Can you please add a delay on implementation to the bill. We would like the bill to take effect 90 days after publication.

Thank you.

Tyler Wenzlaff
Office of Wisconsin State Representative Keith Ripp
47th Assembly District

2/6/2012



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3314/29

MDK:sac&cjs:rs

(3)

stays

(PM has been run)

O-NOTE

2011 BILL

TODAY

2-7

PM

IN 2-6

Con Cat

SAV

1 AN ACT *to repeal* 100.52 (1) (e) and 100.52 (2); *to renumber* 100.52 (3) (b) and
2 100.52 (9); *to renumber and amend* 100.52 (3) (a); *to amend* 20.115 (1) (im),
3 20.115 (8) (jm), 100.52 (4) (a) 2., 100.52 (4) (b) 1. and 100.55 (3) (b) 3.; *to repeal*
4 *and recreate* 100.52 (9) (title); and *to create* 100.52 (1) (c), 100.52 (1) (fm),
5 100.52 (1m), 100.52 (4) (b) 3., 100.52 (8) and 100.52 (9) (a) of the statutes;
6 **relating to:** the prohibition on telephone solicitations to residential customers,
7 granting rule-making authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

Current law regulates "telephone solicitation," which is defined as the unsolicited initiation of a telephone conversation for the purpose of encouraging the recipient of the telephone call to purchase property, goods, or services. Current law generally prohibits a telephone solicitor, or employee or contractor of a telephone solicitor, from making a telephone solicitation to a residential customer if the customer's landline or wireless telephone number is included in a nonsolicitation directory maintained by the Department of Agriculture, Trade and Consumer Protection (DATCP), which lists residential customers who do not wish to receive telephone solicitations. Current law exempts the following from the prohibition: 1) telephone solicitations made by nonprofit organizations; 2) telephone solicitations made in response to a recipient's request; and 3) telephone solicitations made to

BILL

current clients of the person selling property, goods, or services that are the reason for the solicitation. Current law requires DATCP to promulgate rules requiring that telephone solicitors register with DATCP and pay initial registration and annual registration renewal fees to DATCP, which DATCP must use for establishing and maintaining the nonsolicitation directory, as well as for consumer protection, information, and education. Current law prohibits a telephone solicitor who is not registered from requiring that employees or contractors make telephone solicitations in this state. Current law also provides that if a residential customer does not biennially renew his or her listing in the nonsolicitation directory, DATCP must eliminate the customer's telephone number from the directory.

Federal law also regulates telephone solicitations by authorizing the Federal Trade Commission (FTC) to prohibit deceptive and abusive telemarketing acts or practices. Under that authority, the FTC has promulgated a regulation that, with certain exceptions, prohibits a telemarketer from initiating a telephone call encouraging the purchase of goods or services if the recipient's telephone number is on a national "do-not-call" registry maintained by the FTC that consists of the telephone numbers of persons who do not wish to receive such calls. One of the exceptions applies to telemarketing calls to businesses. Federal law requires telemarketers to pay annual fees in order to access the registry. The FTC allows a person to add a landline or wireless telephone number to the registry through a toll-free number or over the Internet. Under federal law, inclusion of a telephone number in the registry is permanent and a person is not required to periodically renew the inclusion. However, a person may remove a telephone number from the registry and the FTC must periodically review the registry and remove telephone numbers that have been disconnected or reassigned to another person.

This bill eliminates the state's nonsolicitation directory and instead prohibits a telephone solicitor, or employee or contractor of a telephone solicitor, from making a telephone solicitation, as defined under current state law, to a landline or wireless telephone number that is included on a "state do-not-call registry," which the bill defines as the portion of the national do-not-call registry that consists of telephone numbers with Wisconsin area codes. The bill allows DATCP to cooperate with the FTC to add telephone numbers that were in the state's nonsolicitation directory to the national do-not-call registry. The bill's prohibition is subject to the same exemptions as the prohibition under current state law. The bill requires DATCP to publicize the procedures for a residential customer to add a telephone number to the national do-not-call registry.

The bill also provides that the initial registration and annual registration renewal fees that are paid by telephone solicitors must be used for DATCP's administration and enforcement of the requirements applicable to telephone solicitors, as well as for consumer protection, information, and education. The bill allows DATCP to base the amount of a fee that a telephone solicitor must pay on a methodology established by rule, in addition to basing the amount on the number of telephone lines used by the telephone solicitor to make solicitations, which is the basis allowed under current law. In addition, the bill requires that DATCP's rules require a telephone solicitor to provide DATCP with proof that the telephone solicitor

BILL

has complied with federal law in obtaining copies or updated versions of the state do-not-call registry. The proof must be provided upon initial registration and annual renewal, as well as any other time upon DATCP's request. Finally, the bill prohibits a telephone solicitor from using or possessing a copy or updated version of the state do-not-call registry that the telephone solicitor has obtained in violation of federal law.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.115 (1) (im) of the statutes is amended to read:

2 20.115 (1) (im) *Consumer protection; telephone solicitor fees.* The amounts in
3 the schedule from telephone solicitor registration and registration renewal fees paid
4 under the rules promulgated under s. 100.52 (3) (a), for consumer protection and
5 consumer information and education.

6 **SECTION 2.** 20.115 (8) (jm) of the statutes is amended to read:

7 20.115 (8) (jm) *Telephone solicitation regulation.* All moneys received from
8 telephone solicitor registration and registration renewal fees paid under the rules
9 promulgated under s. 100.52 (3) (a) not appropriated under sub. (1) (im) for
10 ~~establishing and maintaining the nonsolicitation directory under~~ administering and
11 enforcing s. 100.52 (2).

12 **SECTION 3.** 100.52 (1) (c) of the statutes is created to read:

13 100.52 (1) (c) "National do-not-call registry" means the national database
14 established by the federal trade commission under 47 USC 227 (c) (3) that consists
15 of telephone numbers of residential customers who object to receiving telephone
16 solicitations.

17 **SECTION 4.** 100.52 (1) (e) of the statutes is repealed.

18 **SECTION 5.** 100.52 (1) (fm) of the statutes is created to read:

BILL**SECTION 5**

1 100.52 (1) (fm) "State do-not-call registry" means the portion of the national
2 do-not-call registry that consists of telephone numbers with Wisconsin area codes.

3 **SECTION 6.** 100.52 (1m) of the statutes is created to read:

4 100.52 (1m) NATIONAL DO-NOT-CALL REGISTRY. The department may cooperate
5 with the federal trade commission to add telephone numbers included in the
6 nonsolicitation directory, as defined in s. 100.52 (1) (e), 2009 stats., to the national
7 do-not-call registry.

8 **SECTION 7.** 100.52 (2) of the statutes is repealed.

9 **SECTION 8.** 100.52 (3) (a) of the statutes is renumbered 100.52 (3) and amended
10 to read:

11 100.52 (3) REGISTRATION OF TELEPHONE SOLICITORS. The department shall
12 promulgate rules that require any telephone solicitor who requires an employee or
13 contractor to make a telephone solicitation to a residential customer in this state to
14 register with the department, obtain a registration number from the department,
15 and pay ~~a~~ an initial registration fee and an annual registration renewal fee to the
16 department. ~~The amount of the registration fee shall be based on the cost of~~
17 ~~establishing the nonsolicitation directory, and the amount that an individual~~
18 ~~telephone solicitor is required to pay shall be based on the number of telephone lines~~
19 ~~used by the telephone solicitor to make telephone solicitations~~ or some other
20 methodology established by the department by rule. The rules shall also require a
21 telephone solicitor that registers with the department to ~~pay an annual registration~~
22 ~~renewal fee to the department, at the time of initial registration, the time of annual~~
23 ~~renewal, and any other time upon request of the department, provide the department~~
24 with proof that the telephone solicitor has complied with federal law in obtaining
25 copies and updated versions of the state do-not-call registry. The amount of the

BILL

1 ~~registration renewal fee fees~~ shall be based on the ~~cost of maintaining the~~
2 ~~nonsolicitation directory amount required to administer and enforce this section and~~
3 ~~to provide the amounts appropriated under s. 20.115 (1) (im).~~

4 **SECTION 9.** 100.52 (3) (b) of the statutes is renumbered 100.52 (4) (d).

5 **SECTION 10.** 100.52 (4) (a) 2. of the statutes is amended to read:

6 100.52 (4) (a) 2. Make a telephone solicitation to a ~~residential customer if the~~
7 ~~nonsolicitation directory that is provided or made available to the telephone solicitor~~
8 ~~under sub. (2) (d) includes a listing for the residential customer~~ telephone number
9 that, at the time the solicitation is made, is listed on the state do-not-call registry.

10 **SECTION 11.** 100.52 (4) (b) 1. of the statutes is amended to read:

11 100.52 (4) (b) 1. Require an employee or contractor to make a telephone
12 solicitation to a person in this state unless the telephone solicitor is registered with
13 the department under the rules promulgated under sub. (3) (a).

14 **SECTION 12.** 100.52 (4) (b) 3. of the statutes is created to read:

15 100.52 (4) (b) 3. Use or possess a copy or updated version of the state
16 do-not-call registry that the telephone solicitor has obtained in violation of federal
17 law.

18 **SECTION 13.** 100.52 (8) of the statutes is created to read:

19 100.52 (8) RULES. The department may promulgate rules to administer and
20 enforce this section.

21 **SECTION 14.** 100.52 (9) (title) of the statutes is repealed and recreated to read:

22 100.52 (9) (title) DEPARTMENT DUTIES.

23 **SECTION 15.** 100.52 (9) of the statutes is renumbered 100.52 (9) (b).

24 **SECTION 16.** 100.52 (9) (a) of the statutes is created to read:

BILL

SECTION 16

100.52 (9) (a) The department shall publicize the procedures for a residential customer to add a telephone number to the national do-not-call registry.

SECTION 17. 100.55 (3) (b) 3. of the statutes is amended to read:

100.55 (3) (b) 3. Knowingly or negligently utilizing information regarding consumers who have made an election under 15 USC 1681b (e) to be excluded from prescreened consumer reports, or who have registered their telephone numbers on the national do-not-call registry as provided in 47 CFR 64.1200, ~~or who are listed in the nonsolicitation directory under s. 100.52 (2).~~

(END)

(NSEP 7 6-8)

2-note

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3314/3ins
MDK:.....

1

INSERT 6-8:

2


SECTION 1. Effective date.

3

(1) This act takes effect on the first day of the 4th month beginning after

4

publication.



**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3314/3dn

MDK:.....

js

— date —

Rep. Ripp:

This version is identical to the previous version, except for the inclusion of the delayed effective date.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3314/3dn
MDK:cjs:jf

February 7, 2012

Rep. Ripp:

This version is identical to the previous version, except for the inclusion of the delayed effective date.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

Basford, Sarah

From: Wenzlaff, Tyler

Sent: Friday, February 10, 2012 2:45 PM

To: LRB.Legal

Subject: Draft Review: LRB 11-3314/3 Topic: Require enforcement of federal _do not call_ telemarketing list

Please Jacket LRB 11-3314/3 for the ASSEMBLY.

2/10/2012

Barman, Mike

From: Barman, Mike
Sent: Monday, February 13, 2012 11:39 AM
To: Grinde, Kirsten - DOA
Cc: Wenzlaff, Tyler; Hamele, Mary - DOA
Subject: RE: Possible Fiscal Estimate
Thanks

I will go ahead and submit a request for a FE based on the "/3" version.

Mike Barman (Lead Program Assistant)
State of Wisconsin - Legislative Reference Bureau
Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

From: Grinde, Kirsten - DOA [<mailto:kirsten.grinde@wisconsin.gov>]
Sent: Monday, February 13, 2012 11:25 AM
To: Barman, Mike; Hamele, Mary - DOA
Subject: FW: Possible Fiscal Estimate

Please see the request from Representative Ripp's office below. Please contact Tyler if any additional information is needed.

Thanks,

Kirsten

From: Hayes, Brian - DOA
Sent: Monday, February 13, 2012 11:23 AM
To: Grinde, Kirsten - DOA
Subject: FW: Possible Fiscal Estimate

A fiscal estimate request.

From: Wenzlaff, Tyler [<mailto:Tyler.Wenzlaff@legis.wisconsin.gov>]
Sent: Monday, February 13, 2012 9:37 AM
To: Hayes, Brian - DOA
Cc: Chalmers, Sandy S - DATCP; Moll, Keeley A - DATCP
Subject: FW: Possible Fiscal Estimate

Brian,

Rep. Ripp would like to withdraw his request for a fiscal estimate on the LRB 3314/2 and would like to have an estimate done on LRB 3314/3 instead. /3 changes the date of implementation to the first day of the 4th month after publication.

If you have any questions please do not hesitate to contact me.

Thank you.

Tyler Wenzlaff
Office of Wisconsin State Representative Keith Ripp
47th Assembly District
608-266-3404

2/13/2012

Memo

To: Representative **Ripp**

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2011 session draft.

LRB Number: LRB-3314

Version: “/3”

Fiscal Estimate Prepared By: (agency abbr.) DATCP

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 02 / 20 / 2012

*** * * * ***

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Un-introduced Draft*

> If re-drafted ... please insert this cover sheet and attached early fiscal estimate into the drafting file “guts” ... after the draft's old version (the version that this fiscal estimate was based on), and just before re-draft of the updated version.

> If introduced ... please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re-process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2011 AB 634

Barman, Mike

From: LRB.Legal
Sent: Monday, February 20, 2012 8:46 AM
To: Rep.Ripp
Cc: Wenzlaff, Tyler
Subject: LRB-3314/3 (un-introduced) (FE by DATCP - attached - for your review)

Attachments: FE-3314_DATCP3.PDF



FE-3314_DATCP3.
PDF (85 KB)

Subject: Trade Regulation ... other

Mike Barman (Lead Program Assistant)
State of Wisconsin - Legislative Reference Bureau
Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov